



Town of Boxborough, Massachusetts
Planning Department
Staff Report

Prepared by: Adam Duchesneau, AICP, Town Planner

March 31, 2016

Site: 1034 & 1102 Massachusetts Avenue

Applicant Name: Phaneuf RT (Lawn Barber, Inc.)

Applicant Address: 1034 Massachusetts Avenue, Boxborough, MA 01719

Property Owner 1 Name: Phaneuf Realty Trust

Property Owner 1 Address: 1034 Massachusetts Avenue, Boxborough, MA 01719

Property Owner 2 Name: Neil Phaneuf Jr./Kerstin Phaneuf

Property Owner 2 Address: 23 State Road, Stow, MA 01775

Surveyor Name: R. Wilson & Associates

Surveyor Address: 360 Massachusetts Avenue, Acton, MA 01720

Legal Notice: In accordance with Boxborough Zoning Bylaw Section 8000 Site Plan Approval and the Site Plan Approval Rules & Regulations, the Planning Board will conduct a public hearing on Monday, April 4, 2016 at 7:45 PM in the Upstairs Meeting Room in the Boxborough Town Hall, 29 Middle Road, to review the application submitted by Phaneuf RT (Lawn Barber, Inc.) for Site Plan Approval to allow the erection of a free standing hoop house structure, relocation of parking spaces, repositioning of landscape and masonry materials and other storage, and other site improvements.

The subject properties are located on the south side of Massachusetts Avenue/Route 111 and addressed as 1034 and 1102 Massachusetts Avenue; Assessor's Parcel Numbers 14-002-000 and 13-014-000.

Zoning Districts: Industrial-Commercial Zoning District with Wetlands and Watershed Protection District (W-District)

Zoning Approval Sought: Site Plan Approval under Section 8000

Date of Application: March 15, 2016

Date(s) of Public Hearing: April 4, 2016

I. Project Description

1. Subject Property: The project site is located on the south side of Massachusetts Avenue/Route 111. The entire 1.1 acre property at 1034 Massachusetts Avenue is occupied by Lawn Barber, Inc., a landscaping contractor business. The property contains an approximately 800 square foot office building, a two-story 1,750 square foot CMU garage building, a recently constructed 1,600 square foot hoop house structure, various landscaping material and equipment storage shelters, and associated parking. Lawn Barber, Inc. also leases portions of land from the adjacent property to the west, 1102 Massachusetts Avenue, for stone material storage, parking, and equipment storage. The property at 1034 Massachusetts Avenue was awarded a Special Permit in 1998 from the Zoning Board of Appeals to erect a freestanding

sign; Site Plan Approval in 2005 from the Planning Board to establish the landscaping business (Lawn Barber, Inc.), construct a 40 foot by 40 foot addition onto one of the existing buildings, erect a freestanding sign, and other site improvements; a Special Permit in 2006 from the Zoning Board of Appeals to erect a freestanding sign and extend a pre-existing nonconforming structure; and a Special Permit in 2015 from the Zoning Board of Appeals to erect a freestanding sign.

2. Proposal: In 2005, the Applicant received Site Plan Approval from the Planning Board to operate a landscaping business out of the property. Since that time, over the course of the last decade, the Applicant has expanded the stone cutting portion of their business significantly, erected a new structure, relocated material and equipment storage to different locations on the property, and moved their employee parking to the informal gravel parking area immediately adjacent to the roadway on the property at 1102 Massachusetts Avenue. The business currently performs landscaping design and construction, including maintenance, stone work, and paving. As part of this operation, Lawn Barber, Inc. cuts a significant amount of stone at the property for usage at jobs sites in Massachusetts and southern New Hampshire. Much of this stone cutting has been conducted outdoors on the property with block saws. In April of 2015, the Applicant applied for and was awarded a Building Permit to construct a 40 foot by 40 foot “hoop house/tent garage/green house” structure, which now currently houses a large veneer pro saw and three block saws. The Applicant is seeking Site Plan Approval to legalize the expansion of their business operations, the erection of the freestanding hoop house structure, the relocation of parking spaces, the repositioning of landscape and masonry materials, and other site improvements.

3. Nature of Application: Section 8000 of the Boxborough Zoning Bylaw states that for commercial, business, or industrial purposes (as well as many other uses), no permit for construction or relocation which results in a substantial alteration, and no existing use shall be extended, unless Site Plan Approval has been granted by the Planning Board. The Building Permit for the hoop house structure should not have originally been issued without Site Plan Approval from the Planning Board. Additionally, the relocation of the parking spaces towards the front of the property at 1102 Massachusetts Avenue and the general expansion of the business operations should have received Site Plan Approval as well prior to these changes occurring. The Applicant is now seeking approval to legalize the expansion of the business, the erection of the hoop house structure, and the relocation of various parking and storage items around the property.

4. Surrounding Neighborhood: The subject parcels are located in an Industrial-Commercial Zoning District in west-central Boxborough on the south side of Massachusetts Avenue/Route 111. To the west of the subject site are two properties with two residential dwellings and a number of automotive repair businesses. To the southwest the land is occupied by the business National Technical Systems, Inc., who perform a variety of testing on various products and immediately to the south is a large wetland area. To the east is a Business-1 Zoning District with a custom cabinetry and woodworking business, a saw mill, and two retail gun stores. Southeast of the subject site are two, and soon to be three, residential dwellings located on Sara’s Way and beyond them are the single-family residences located on Hughes Lane. Across Massachusetts Avenue to the north is a Business Zoning District consisting of primarily of wetlands, but does contain one single-family dwelling.



Existing Hoop House Structure (left) and CMU Garage Building at 1034 Massachusetts Avenue



Hoop House Structure (Looking East) at 1034 Massachusetts Avenue



Yonani Veneer Pro Saw (Left Photo) and Three MK 5000 Block Saws (Right Photo)



Parking Area on 1102 Massachusetts Avenue along Route 111/Massachusetts Avenue



Material Storage at 1034 Massachusetts Avenue



Material and Product Storage on 1102 Massachusetts Avenue



5. Comments:

Board of Selectmen: The Board did not provide any comments regarding the proposed project.

Board of Health: In a memorandum to the Planning Board dated March 31, 2016, the Board of Health Agent indicated the following:

“This office has reviewed the site plan for the above mentioned property and has the following concerns.

Sewage Disposal

I have reviewed the file in the Board's office and can find no permit for the sewage disposal system for the site. The Title 5 inspection done for the site indicates that it was designed for office space; the report indicates the system has a 500 gallon tank and small leaching area. The activity on the site is significantly different than the original business and the Board has no record of working being done on the existing sewage disposal system to accommodate for the increase in business. The Police Chief has sent a photo showing what appears to be improper bathroom use behind a storage container on the site.

Given the increase in the activity on the site, the age and size of the current sewage disposal system and the improper bathroom use on site I would recommend the following.

- 1.) Provide bathroom room facilities on site for the workers.
- 2.) Install a sewage disposal system to handle the capacity of the site.

Water Supply

The site plan indicates there are 27 individuals who work for the business at this location. The MA Department of Environmental Protection (DEP) defines a public water supply as a supply that serves more than 25 people for more than 60 days. It would appear the site should have a public water supply approved by the DEP. I would recommend the Board refer the owner to the DEP to determine if the operations at the site would require the property to have a public water supply.

Pollution Potential

There are a number of potential sources of pollution on the site. In accordance with 310CMR7.00 Air Pollution Control regulations it is a violation of these regulations for an individual to create a "condition of air pollution." The business operation must comply with these regulations.

7.01: General Regulations to Prevent Air Pollution (1) No person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution.

AIR POLLUTION means the presence in the ambient airspace of one or more air contaminants or combinations thereof in such concentrations and of such duration as to: (a) cause a nuisance; (b) be injurious, or be on the basis of current information, potentially injurious to human or animal life, to vegetation, or to property; or (c) unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business

If there are floor drains in the garage building they need to be connected to an industrial water holding tank in accordance with 310CMR18.00.

18.01: Purpose The purpose of 314 CMR 18.00 et seq. is to protect the public health, safety and the environment by providing construction, operation, and record keeping requirements for holding tanks, mobile tanks, and containers that accumulate or store industrial wastewater prior to off-site recycling, treatment or disposal. 314 CMR 18.00 directs owners and operators of industrial wastewater holding tanks to comply with these standards, submit a performance-based compliance certification, and keep necessary records.

Industrial Wastewater means waste in liquid form resulting from any process of industry, trade or business, regardless of volume or pollutant content. Waste in liquid form consisting of only sewage is not industrial wastewater.

All hazardous materials must be handled/disposed of in compliance with Federal, State and local regulations.”

Building Department: In an email to the Town Planner on March 31, 2016, the Building Inspector indicated the following:

“Based upon a review of the Site Plan Approval application materials, the property files, and the site visit performed on Tuesday, March 29, 2016 regarding the property at 1034 Massachusetts Avenue (Lawn Barber, Inc.), I have the following comments regarding the Site Plan Approval application:

- 1) The CMU garage building is a pre-existing nonconforming Principal Building.
- 2) The hoop house structure itself is an Accessory Building. However, based upon the Site Plan submitted by the Applicant, the location of the hoop house relative to the side lot line and the CMU garage building is in violation of Section 5007 of the Zoning Bylaw as it is not setback 10 feet or more from the side lot line or the CMU garage building. These setbacks issues should be addressed by verification of the location of this structure on the submitted Site Plan or physical adjustments to the structure in the field.
- 3) The use occurring within the hoop house structure (stone cutting operations) is the principal use of the property according to the Applicant, which therefore changes the status of the hoop house structure from an Accessory Building to a Principal Building. Per Section 5002 of the Zoning Bylaw, Principal Buildings should have 50 foot front, side, and rear yard setbacks in the Industrial-Commercial Zoning District, which makes the hoop house noncompliant with Section 5002.”

Conservation Commission: The Conservation Commission Chair indicated the Commission had “no wetlands interests” with regard to the application as discussed at their March 28, 2016 meeting.

Consulting Engineer: Places Associates, Inc. has not provided any comments as of the date of this Staff Report.

Fire Department: The Fire Chief did not provide any comments regarding the proposed project.

Police Department: In an email to the Town Planner on March 17, 2016, the Police Lieutenant indicated “I reviewed the site plan and see no issues with the regard to the Police Department.”

Historical Commission: The Commission did not provide any comments regarding the proposed project.

Housing Board: The Board did not provide any comments regarding the proposed project.

Littleton Electric Light Department: In an email to the Town Planner on March 22, 2016, the Littleton Electric Light Department (LELD) indicated the following:

“LELD can service this new facility from the existing transformer on the site. All work has been completed to accommodate this facility.”

Public Work Department: The Public Works Director did not provide any comments regarding the proposed project.

School Committee: The Committee did not provide any comments regarding the proposed project.

II. Compliance with Section 7100 Wetlands and Watershed Protection District (W-District) and Section 7200 Lands Bordering the W-District

It does not appear the Applicant has performed any work within the wetlands, the W-District, or their 100 foot buffer areas. However, it is somewhat difficult to completely confirm this as the Applicant has not submitted any information regarding nearby wetlands, waterbodies, the W-District, and their 100 foot buffer areas, and has asked for a waiver from submitting this information. Per an email from the Building Inspector on January 26, 2016, the Applicant is allowed to continue to maintain nine (9) parking spaces on the existing gravel parking area along the front of the property at 1102 Massachusetts Avenue closest to the pond as these spaces are recognized as pre-existing nonconforming spaces. The remainder of the existing gravel parking area, which appears to be outside of the 100 foot buffer areas for the W-District and nearby pond, will be returned to landscaping/grass. The Applicant is also currently working with the Conservation Commission to address the illicit discharge of wastewater slurry onto the adjacent property and into a nearby wetland. The activities which caused this illicit discharge have been ceased and relocated to a location where the wastewater can be properly managed.

III. Compliance with Section 8007 Site Plan Approval Decision

The Applicant has submitted plans consistent with Sections 8005 and 8006 of the Boxborough Zoning Bylaw and the Site Plan Approval Rules & Regulations. The Planning Board should review the proposed project for consistency with the following Site Plan Approval Requirements of the Zoning Bylaw:

1. The proposal shall comply with the purpose and intent of the Zoning Bylaw and with existing local and regional plans.

A landscaping contractor business is a permitted use in the Industrial-Commercial Zoning District and is a use that is well located on Massachusetts Avenue/Route 111. The location of parking spaces as shown on the submitted Site Plan were either approved as part of the 2005 Site Plan Approval or are pre-existing nonconforming spaces. The Applicant is proposing to maintain the nine (9) surface parking spaces on the adjacent property at 1102 Massachusetts Avenue closest to the pond, which is sufficient to accommodate the 27 employees at the business. Additional parking spaces are being provided for on-site to accommodate other vehicles associated with the business.

The recently constructed hoop house structure was permitted as an accessory building and should to be setback 10 feet from the side lot line and other structures on the property. However, the location of the hoop house does not appear to meet these requirements according to the Site Plan which was submitted as part of the application materials. The submitted Site Plan shows the hoop house structure to be as close to 8 feet to the side lot line and less than 4 feet away from the CMU garage building, making it nonconforming with the requirements of Section 5007 of the Zoning Bylaw.

Additionally, as is noted above, the Building Inspector has determined the hoop house structure is actually being used as a principal building because it contains the principal use of the business, stone

cutting. As such, the location of the hoop house should be in compliance with the setbacks outlined in the dimensional schedule, Section 5002, which it is not. This portion of the Zoning Bylaw calls for 50 foot front, side, and rear yard setbacks for principal buildings in the Industrial-Commercial Zoning District.

It should be noted here that in the 2005 Special Permit Decision issued by the Zoning Board of Appeals and in the 2005 Site Plan Approval issued by the Planning Board, the CMU garage building was deemed to be a pre-existing nonconforming principal building. This interpretation has been substantiated by the Building Inspector in his email to the Town Planner on March 31, 2016. The office building at the front of the property is also a pre-existing non-conforming structure as it was the first building erected at the property.

2. The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. To the extent possible, building sites shall be designed to minimize the use of wetlands, steep slopes, floodplains, hilltops; minimize obstruction of scenic vistas from publicly accessible locations; preserve unique natural, scenic and historic features; minimize tree, soil and vegetation removal; and maximize open space retention.

The hoop house structure has been located on the project site in a location where it is substantially screened from the roadway and many of the abutting properties by the other buildings on the property and the surrounding terrain. The area Lawn Barber, Inc. is leasing on 1102 Massachusetts Avenue is somewhat higher than the floor elevation of the hoop house and the CMU garage screens the structure almost entirely from roadway. While the subject property has been mostly cleared of mature vegetation for some time, the vegetation on adjacent properties provides a substantial buffer to the neighboring businesses and residences. However, the elevation of properties to the east and southeast of the project site are somewhat higher, which does make the hoop house more visible from these locations, but this is not a visual change from the pre-existing conditions from those adjacent areas. The hoop house structure and new site layout does not appear to disturb any wetlands, the W-District, their 100 foot buffer areas, steep slopes, or floodplain areas.

3. Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in the roof and wall lines, and other architectural techniques. Proposed buildings shall relate harmoniously to each other.

The one-story hoop house structure is in keeping with scale of other structures in the area which are also primarily one- and two-story buildings. The hoop style of the structure is somewhat out of character with other buildings and structures in the area as the majority of other buildings have peaked roofs with varying pitches. Additionally, other business structures in the area are typically warehouse-style buildings made of metal with few windows. The hoop house structure also does not relate well to the other buildings and structures on the property at 1034 Massachusetts Avenue which consist of CMU or brick materials.

4. Adequate measures shall be proposed to prevent pollution of surface and ground water, to minimize erosion and sedimentation, to prevent changes in groundwater levels, to minimize potential for flooding, and to provide for stormwater drainage consistent with the functional equivalent of the Planning Board's Subdivision Rules & Regulations.

In March of 2016, it was discovered the Applicant had been discharging wastewater slurry from their stone cutting operations off of their property onto the adjacent parcel at 1120 Massachusetts Avenue and into a nearby wetland. On March 11, 2016, a Cease & Desist Order pertaining to all stone cutting operations was placed on the property by the Building Inspector. The Applicant has claimed this slurry discharge was the result of stone cutting saws operating outdoors and the wastewater system (pits) which was intended to contain this slurry had over flown and leaked onto the adjacent property. It appears this

activity had been occurring for more than the past year. The recently erected hoop house structure contains a pitched floor, trench drain, and water recycling tank system which contains all of the wastewater generated from stone cutting saws which operate inside of the hoop house. Sediment is cleaned out from the trench drain daily and from the outside tanks periodically as needed. The Town Planner is proposing a condition of the Site Plan Approval which would require all stone cutting operations to occur inside a structure where an appropriate wastewater system is located. Other modifications to the property will not impact the stormwater drainage at the site or impact the potential for flooding in the area.

5. Roadways and circulation system shall be designed to promote convenience and safety for both pedestrians and vehicles. Access roads by which the proposed development is reached shall be adequate in width, grade and construction to carry, without danger or congestion, the additional traffic that is generated from the development.

There were no changes to the access road to the project site from Massachusetts Avenue/Route 111 as a result of the construction of the hoop house and other site modifications. The hoop house provided an overhead covering for the stone cutting operations which were already ongoing at the property. The new structure does not result in any new employees coming or going from the site as it simply provides a new work environment for those workers cutting stone by enclosing those activities.

6. Adequate buffers shall be provided to protect abutting properties from lighting, sight, sound, dust, and vibration.

As noted above, other business operations are located to the east, west, and southwest of the subject property, however, there are a number of single-family dwellings nearby on Sara's Way, Hughes Lane, and to the west along Massachusetts Avenue/Route 111. In some instances these residential dwellings are well buffered by significant amounts of vegetation. The rear of the project site abuts an expansive woodland and wetland area. Currently, there is only minimal lighting at the property for security purposes in the evening and the Applicant is not proposing any changes to the existing lighting situation. However, the Town Planner is proposing a condition which would require all exterior lighting to be confined to the subject property and must not intrude, interfere, or spill onto neighboring properties. To address noise concerns associated with the Applicant's business, the Town Planner is recommending a condition which would require the Applicant to install sound reduction measures on the interior of the structure where the stone cutting will be occurring. This should help to greatly reduce the amount of noise generated by the stone cutting saws at the property. The Town Planner is also proposing a condition which requires all stone cutting operations at the business and deliveries of any kind to only occur between the hours of 7:00 AM and 5:00 PM Monday through Friday, and from 8:00 AM to 1:00 PM on Saturdays.

7. Adequate facilities shall be provided for water supply and for handling and disposal of waste and other production by-products.

The Board of Health Agent has reviewed the property file in the Board of Health's office and can find no permit for the sewage disposal system for the site. The Title 5 inspection completed for the site indicates it was designed for office space, and the report states the system has a 500 gallon tank and small leaching area. The activity on the property is significantly different than the original business and the Board of Health has no record of work being done on the existing sewage disposal system to accommodate for the increase in business. The Police Chief has sent a photo showing what appears to be improper bathroom use behind a storage container on the site. Given the increased activity on the property, the age and size of the current sewage disposal system, and the improper bathroom use on-site, the Board of Health Agent recommends a bathroom be provided on-site for employees and a new sewage disposal system be installed to handle the site's capacity.

Additionally, the application materials indicate there are 27 individuals who work for the business at this location. The Massachusetts Department of Environmental Protection (DEP) defines a public water supply as a supply that serves more than 25 people for more than 60 days. It would appear the site should have a public water supply approved by the DEP. The Board of Health Agent recommends the Board of Health refer the owner to the DEP to determine if the operations at the site would require the property to have a public water supply. The Board of Health Agent also had concerns about the potential for air pollution (noise, odors, etc.) and the handling/disposal of hazardous materials. As such, the Town Planner is recommending a number of conditions be included as part of the Site Plan Approval to address these issues and they are listed below.

8. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment.

The new hoop house structure did not limit access for fire and service equipment to any of the other existing structures on the site. The hoop house was positioned behind the existing CMU garage building and was located in an area which was previously being used for material storage and cutting operations. The Fire Chief has not provided any comments on the new Site Plan.

IV. Recommendation

Site Plan Approval under Section 8000

At this time, the Town Planner is recommending the hearing for this matter be continued to a later Planning Board meeting in order to allow the Applicant to address the issues raised in this Staff Report. The Town Planner is also recommending the following draft conditions be considered for inclusion by the Planning Board when a final decision is rendered for the application:

1. Approval is based upon the finalized plans for the Site Plan Approval (when agreed upon by the Planning Board).
2. The Applicant/Owner shall record the Decision with the Middlesex South Registry of Deeds and provide verification of recording to the Town Planner.
3. The Applicant/Owner shall submit written confirmation from the Tax Collector that all taxes, including any roll back taxes, have been paid in full for the property.
4. The Applicant/Owner shall install an on-site sewage disposal system to handle the capacity of the site and receive approval from the Board of Health.
5. The Applicant/Owner shall contact the Massachusetts Department of Environmental Protection (MADEP) to obtain a public water supply determination in accordance with the MADEP Drinking Water regulations (310 CMR 22.00) and the determination shall be provided to the Board of Health.
6. The operation of the facility cannot create a public health nuisance nor create noise or odors that would be considered a “condition of air pollution” in accordance with 310 CMR 7.00.
7. If there are floor drains in the garage building they need to be connected to an industrial water holding tank in accordance with 310 CMR 18.00.
8. All hazardous materials must be handled/disposed of in compliance with Federal, State, and local regulations.

9. All stone cutting operations at the business and deliveries of any kind shall only occur between the hours of 7:00 AM and 5:00 PM Monday through Friday, and from 8:00 AM to 1:00 PM on Saturdays.
10. All stone cutting operations (the use of stone cutting saws) at the property, with the exception of stone splitting, shall occur inside a structure with sound reduction insulation measures and appropriate wastewater drainage/recycling systems. All doors to the structure where the stone cutting is occurring shall remain closed at all times when cutting is taking place, except for when materials or products are being loaded or unloaded from the building.
11. The Applicant/Owner shall restore the gravel parking area between the eastern most parking space on 1102 Massachusetts Avenue and the western property boundary of 1034 Massachusetts Avenue to grass/vegetation within 60 days of the date of this Decision.
12. Parking along the driveway and in front of the brick office building shall be prohibited.
13. The Applicant/Owner shall only maintain nine (9) parking spaces in the pre-existing nonconforming parking area along Massachusetts Avenue/Route 111 and shall only park nine (9) vehicles in this area. The Applicant/Owner and anyone associated with the landscaping business shall not park vehicles in the Massachusetts Avenue/Route 111 right-of-way.
14. All existing donation bins on 1102 Massachusetts Avenue between the pond and the western boundary of 1034 Massachusetts Avenue shall be removed and no new bins shall be installed in this area.
15. Landscaping materials shall not be stored within the 50 foot front yard setback and shall be kept in an orderly fashion. No retail sale of landscaping materials shall take place at the site.
16. To the extent possible, all exterior lighting must be confined to the subject property, cast light downward, and must not intrude, interfere or spill onto neighboring properties.
17. The Applicant/Owner shall pay all outstanding fees incurred for the Board's consultants including Town Counsel and the Board's Consulting Engineer, for the performance of any of the review and inspection services contemplated herein, and including any such fees incurred prior to the date of this Decision.
18. Violation of any of the conditions of this Decision shall be grounds for revocation of this Decision, or of any building or occupancy permit granted hereunder. In case of any violation of the continuing obligations of this Decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to correct the violation and to enforce the conditions of this Decision. The Town may enforce compliance with the conditions of this Decision by any action of injunctive relief before any court of competent jurisdiction.